



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 2, 1998

Ms. Leslie Poynter Dixon
Criminal District Attorney
Van Zandt County
202 N. Capitol
Canton, Texas 75103

OR98-0872

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113187.

The Van Zandt County Criminal District Attorney's Office (the "district attorney") received a request for a variety of information "obtained by the county, its agents or employees during the course of the investigation of Jeryl Cockerham and his activities as sheriff of Van Zandt County." In response to the request, you submitted to this office for review the information you assert is responsive.¹ You contend that the submitted information should be withheld from disclosure pursuant to section 552.108 of the Government Code. You also assert that the records, as part of a grand jury investigation, are not subject to the act. We have considered the exception and arguments you claim and reviewed the submitted information.

We first consider whether the grand jury records need not be released. This office has previously held that where a district attorney, acting as an agent of the grand jury, gathers information pursuant to a subpoena, the information is deemed to be in the constructive possession of the grand jury despite the fact that the information is in the actual possession of the district attorney. Open Records Decision No. 411 (1984). Because section 552.003(b) of the Government Code specifically excludes the judiciary, of which the grand jury is a part, from the provisions of the Open Records Act, we conclude that the grand jury records are not subject to the provisions of Open Records Act, and therefore need not be disclosed.²

¹You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

²However, the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney. Open Records Decision No. 513 (1988).

However, to the extent that the submitted information, which you have classified as grand jury records, is not within the constructive possession of the grand jury, we must consider whether any of the claimed exceptions are applicable to the information.

We note that among the records you have submitted to our office for review you included what appear to be documents filed with a court. If the records have been filed with a court, they are part of the public record and must be released.³ See *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding). If, however, the documents have not been filed with a court, we will consider whether the remaining records are protected from disclosure by section 552.108 of the Government Code.

We next consider your assertion that section 552.108 of the Government Code excepts the submitted information from required public disclosure. Section 552.108, the "law enforcement exception," provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

³The "law enforcement exception" was not intended by the legislature to shield from public view information in the hands of police units that, absent special law enforcement needs or circumstances, would ordinarily be available to the public if possessed by a different governmental unit. See Open Records Decision Nos. 434 (1986) at 2, 287 (1981) at 2 (whether information falls within section 552.108 must be determined on a case-by-case basis).

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In your brief to this office, you claim that "the information in the Criminal District Attorney's file is excepted from disclosure under Section 552.108 in that certain information relates to an investigation that did not result in conviction or deferred adjudication." However, you also state that the "investigation . . . culminated in . . . [a] plea of guilty to a Class A misdemeanor." In this instance, we conclude that neither sections 552.108(a)(1) nor 552.108(a)(2) are applicable to the submitted records.

You also contend that "all of the information . . . was prepared by the prosecutor in anticipation of litigation and reflects the mental impressions and legal reasoning of the prosecutor." Based on this assertion and upon review of the submitted information, we believe that it was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation, or represents the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude that you may withhold the submitted information under 552.108(a)(3). However, you must release the type of information that is considered to be front page offense report information. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 113187

Enclosures: Submitted documents

cc: Mr. Dave Berry, Managing Editor
Tyler Courier-Times-Telegraph
P. O. Box 2030
Tyler, Texas 75710-2030
(w/o enclosures)